

Agenda

Item #4



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: November 18, 2011
Re: Recommended Action Concerning Sen. Thibodeau's Travel Records

In 2010, State Senator Michael D. Thibodeau ran for re-election as a Maine Clean Election Act (MCEA) candidate. He was randomly selected for an audit. Because the campaign had used \$816.47 in MCEA funds to reimburse the candidate for travel, the auditor requested a log of the candidate's campaign travel. The Commission staff completed the audit of his campaign on October 12, 2011. The only finding in the audit was that the log did not fully meet the requirements of the applicable Commission Rule.

Rule on Reimbursements for Campaign Travel

Under Chapter 3, Section 7(1)(C) of the Commission's rules, if a campaign uses MCEA funds to reimburse a candidate for vehicle travel, the candidate is required to keep a log of his or her travel showing certain information for each campaign trip (date, destination, purpose, number of miles traveled). The record-keeping requirement is intended to reassure Maine taxpayers that MCEA funds will not be paid to candidates for travel that is unrelated to their campaigns.

Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may

disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

Commission Rules, Chapter 3, Section 7(1)(C). The rule does not require that the log must be created contemporaneously with the travel, although that is certainly the preference of the Commission staff and the best way to create a reliable record. The rule states that the Commission may disallow any vehicle travel reimbursements if the campaign cannot produce an accurate record, but the rule does not require the Commission to disallow the travel.

Sen. Thibodeau's Record of Travel

As part of the audit, Sen. Thibodeau's campaign submitted a record of the Senator's campaign travel (attached). Unfortunately, the log did not include the destination or purpose of the campaign trips, as required by the Commission's Rule. Accordingly, the Commission's auditor could not determine the reasonableness of the mileage reimbursement.

Affidavit from Sen. Thibodeau

At your October 28, 2011 meeting, I recommended that you find that the campaign violated Chapter 3, Section 7(1)(C) of the Commission's Rule and assess a civil penalty of \$100. Sen. Thibodeau did not wish to dispute the violation, and had already paid the penalty of \$100. You directed me to request additional information from Sen. Thibodeau to demonstrate that the dates and number of miles in the travel record were accurate. On November 4, 2011, I wrote to Sen. Thibodeau requesting the additional information. He submitted the attached affidavit, through his attorney, William P. Logan, Esq. of Irwin, Tardy & Morris.

Recommendation by Commission Staff

The Commission's auditor and I have reviewed the affidavit. Sen. Thibodeau provided me with a similar account by telephone, before I knew he was represented by legal counsel. He also told me that he would be unable to attend your November 30 meeting because he was scheduled to be out of state at a legislative conference. The Commission's auditor and I expect that the candidate understands the importance of including truthful statements in an affidavit, and we are persuaded that the candidate conducted sufficient travel to be entitled to reimbursement. We recommend

accepting the reimbursement, but finding that the candidate violated Chapter 3, Section 7(1)(C) of the Commission Rules and assessing a \$100 penalty for the violation.

If you would like to give the Commission staff further direction concerning how to apply Chapter 3, Section 7(1)(C) in the 2012 elections, we would be happy to receive your views. If you believe the rule needs to be amended to require creation of the record contemporaneously with or near the time of travel, we can include those proposed changes in a 2012 rulemaking.

Thank you for your consideration of this memo.

**IRWIN
&
TARDY
MORRIS**

William P. Logan
wlogan@itmlaw.com

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Newport, Maine 04953

207.368.2828 T
207.368.2822 F

Via e-mail only

November 16, 2011

Jonathan Wayne, Executive Director
Commission on Governmental Ethics
and Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: *Hon. Michael Thibodeau*

Dear Jonathan:

Enclosed herewith is an affidavit from the Honorable Michael D. Thibodeau in response to the questions posed by the Commission regarding his mileage reimbursement. I trust they will be satisfactory for the Commission. Senator Thibodeau will not be present at the Commission's meeting as he will be out of state at a previously scheduled conference. I will be in attendance at the meeting to answer any remaining questions the Commission may have as well as to make some comments as we previously discussed.

Thank you and, as always, feel free to contact me with any questions or concerns.

Sincerely,



William P. Logan, Esq.

cc: Hon. Michael D. Thibodeau

AFFIDAVIT OF HON. MICHAEL D. THIBODEAU

I, Michael Thibodeau, of Winterport, Maine, being duly sworn, depose and state as follows:

1. I make this affidavit in response to a request for additional information from the Commission on Governmental Ethics and Election Practices.
2. During my campaign I kept a daily log of my activities, including mileage travelled. I would track the miles by starting the "trip meter" on the odometer in my vehicle. I only recorded miles that were solely related to my campaign activities.
3. When I completed my campaign activities for the day, I would document the mileage travelled in a handwritten log along with other campaign information, such as the number of doors I knocked on that day, number of palm cards handed out and signs placed.
4. There were times that I started the "trip meter" after I began my campaign activities. However, I would only record the number of miles showing on the trip meter and would not attempt to estimate the number of miles I had "missed" that day. Additionally, I also used an antique 1948 Mack truck for various parades and other activities during my campaign. I did not record mileage for that vehicle because the odometer does not work.
5. In addition, I also highlighted roads travelled where I knocked on doors in a gazetteer/atlas of the State of Maine.

6. After the campaign was concluded, my wife took the handwritten log and entered the mileage data into an excel spreadsheet. While I do not know the exact date that she created the excel spreadsheet, I know it was created on or before November 23, 2010 as I have an e-mail message dated 11/23/10 to which the excel spreadsheet file was attached.
7. I no longer have the hand-written log. I believe it was thrown away after the information had been entered into the spreadsheet.
8. At the time I was making the hand-written log, I was not intending to reimburse myself for mileage as I expected to use my campaign funds for other campaign expenses. I was using the information in my log as a "barometer" of my progress in campaigning.


DATED: 11-16-11


Hon. Michael D. Thibodeau

STATE OF MAINE
PENOBSCOT, ss

November 16, 2011

Personally appeared before me the above named Michael D. Thibodeau and made oath that the foregoing statements are true and based on his own personal knowledge.


Notary Public
Tina M. Fitts
My Comm. Exp: 03-30-13

Mike
Thibodeau
Mileage

RECEIVED

JUL 18 2011

Maine Ethics Commission

Date	Mileage	Per Mile	Total
7/5/2010	63	0.44	27.72
7/6/2010	40	0.44	17.6
7/7/2010	25	0.44	11
7/8/2010	97	0.44	42.68
7/9/2010	75	0.44	33
7/12/2010	110	0.44	48.4
7/13/2010	45	0.44	19.8
7/14/2010	88	0.44	38.72
7/15/2010	25	0.44	11
7/16/2010	90	0.44	39.6
7/19/2010	118	0.44	51.92
7/20/2010	100	0.44	44
7/21/2010	85	0.44	37.4
7/22/2010	60	0.44	26.4
7/23/2010	45	0.44	19.8
7/26/2010	28	0.44	12.32
7/27/2010	40	0.44	17.6
7/28/2010	49	0.44	21.56
7/29/2010	20	0.44	8.8
8/2/2010	116	0.44	51.04
8/3/2010	100	0.44	44
8/4/2010	95	0.44	41.8
8/5/2010	78	0.44	34.32
8/6/2010	90	0.44	39.6
8/9/2010	34	0.44	14.96
8/10/2010	57	0.44	25.08
8/11/2010	63	0.44	27.72
8/12/2010	46	0.44	20.24
8/13/2010	51	0.44	22.44
8/16/2010	89	0.44	39.16
8/17/2010	33	0.44	14.52
8/18/2010	116	0.44	51.04
8/20/2010	99	0.44	43.56
8/23/2010	38	0.44	16.72
8/24/2010	46	0.44	20.24
8/24/2010	44	0.44	19.36
8/25/2010	53	0.44	23.32
8/26/2010	47	0.44	20.68
8/27/2010	94	0.44	41.36
8/30/2010	88	0.44	38.72
8/31/2010	75	0.44	33
9/3/2010	82	0.44	36.08
9/7/2010	121	0.44	53.24
9/8/2010	111	0.44	48.84
9/9/2010	84	0.44	36.96
9/10/2010	61	0.44	26.84
9/13/2010	56	0.44	24.64
9/14/2010	43	0.44	18.92
9/15/2010	31	0.44	13.64
9/16/2010	28	0.44	12.32
9/17/2010	77	0.44	33.88
9/20/2010	54	0.44	23.76
9/21/2010	39	0.44	17.16
9/22/2010	43	0.44	18.92
9/23/2010	68	0.44	29.92
9/24/2010	63	0.44	27.72
9/27/2010	75	0.44	33
9/28/2010	41	0.44	18.04
9/29/2010	82	0.44	36.08

reimbursed
\$ 593.47
CK# 126
12/06/10
reimbursed
Mike an
additional
\$223.⁰⁰
✓ 127
02/09/11

9/30/2010	65	0.44	28.6
10/1/2010	27	0.44	11.88
10/4/2010	95	0.44	41.8
10/5/2010	74	0.44	32.56
10/6/2010	123	0.44	54.12
10/7/2010	69	0.44	30.36
10/8/2010	52	0.44	22.88
10/11/2010	143	0.44	62.92
10/12/2010	77	0.44	33.88
10/13/2010	50	0.44	22
10/14/2010	66	0.44	29.04
10/15/2010	89	0.44	39.16
10/16/2010	45	0.44	19.8
10/18/2010	112	0.44	49.28
10/19/2010	94	0.44	41.36
10/20/2010	79	0.44	34.76
10/21/2010	46	0.44	20.24
10/22/2010	44	0.44	19.36
10/23/2010	55	0.44	24.2
10/25/2010	70	0.44	30.8
10/26/2010	46	0.44	20.24
10/27/2010	60	0.44	26.4
Total	5495	0.44	2417.8



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 4, 2011

Hon. Michael D. Thibodeau
169 Coles Corner Road
Winterport, ME 04496

**NOTICE OF PROPOSED FINDING OF VIOLATION
AND POTENTIAL PENALTY OR
REQUEST TO REPAY TRAVEL REIMBURSEMENT**

Dear Senator Thibodeau:

This letter is to advise you that the Ethics Commission's consideration of its audit of your 2010 campaign has been continued until the Commission's next meeting on November 30, 2011, and to request information concerning your records of 2010 campaign travel. This information will be important for the Commission to verify that you were entitled to receive \$816.47 in public funds to reimburse you for your 2010 campaign travel.

October 28, 2011 Meeting

At the Commission's October 28, 2011 meeting, the Commission's auditor presented his final audit report for your 2010 campaign. In the report, the auditor found that the campaign's reimbursement to you of \$816.47 in Maine Clean Election Act funds for your campaign travel did not comply with Chapter 3, Section 7(1)(C) of the Commission's Rules, because the log you kept of your campaign travel (attached) did not record the destination and purpose of each campaign trip. As such, the Commission's auditor was unable to verify the reasonableness of the campaign travel.

At the meeting, I recommended that the Commissioners find your campaign in violation of the Commission's Rule and assess a civil penalty of \$100. (You had previously paid the penalty by delivering a check to the Commission office.)

The Commissioners declined to accept the staff's recommendation, because they believed that they had insufficient information concerning how you recorded your campaign travel to conclude that the log was an accurate record.

Request for Information

The Commissioners continued their consideration of the audit until their next meeting. That meeting is scheduled to be held on Wednesday, November 30, 2011 at 9:00 a.m. in the Commission's Office at 45 Memorial Circle in Augusta.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

The Commissioners request that you provide them with additional information demonstrating that the travel log accurately reflects the dates and number of miles of your campaign travel. In particular, the Commissioners would like you to address:

- As you used your vehicle for campaign purposes between July 5 and October 27, 2010, how did you record the dates and the number of miles traveled each day? (For example, did you take handwritten notes on a log or calendar, or use a computer?)
- Did you record the date and number of miles *directly after* completing each day's travel or some time afterward? How long?
- It appears that the attached travel log might be based on some other travel records. If based on other records, please provide them to the Commission staff.
- When was the attached log prepared – near the time of travel or for purposes of the audit which began in 2011?
- Do you believe that the attached log accurately reflects your campaign travel?

In order to respond, I would suggest attending the Commission's November 30 meeting in person or submitting a written statement which you have sworn is true before a notary public. If you respond by writing, please submit the response no later than Wednesday, November 16.

If you have any additional written records of campaign travel, please submit them as well.

Potential Actions by the Commission

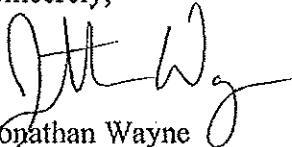
At the November 30 meeting, the Commissioners will likely find that your campaign violated Chapter 3, Section 7(1)(C) of the Commission's Rules. They could take actions with a financial impact that could range from

- assessing a civil penalty of \$100 under 21-A M.R.S.A. § 1127(1) for the violation of the Commission Rule (that provision permits the Commission to assess penalties of up to \$10,000 for violations of the MCEA), to
- disallowing the travel reimbursements and requiring you to return \$816.47 to the Maine Clean Election Fund pursuant to Chapter 3, Section 7(1)(C) of the Commission's Rules.

Hon. Michael D. Thibodeau
Page 3
November 4, 2010

Thank you for your cooperation with this request. If you have any questions about this matter, please feel free to call me at 287-4179 or e-mail me at Jonathan.Wayne@maine.gov.

Sincerely,



Jonathan Wayne
Executive Director

cc: Carol Weston, Campaign Treasurer



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

October 12, 2011
Audit Report No. 2010-SEN012
Candidate: Michael D. Thibodeau
Senate District 23

Background

Senator Michael D. Thibodeau was a candidate for re-election to the Maine State Senate, District 23, in the 2010 general election. Sen. Thibodeau was certified by the Commission as a Maine Clean Election Act (MCEA) candidate on May 10, 2010. MCEA candidates are required under the Act to submit reports of their contributions received, expenditures, outstanding campaign debt, and equipment purchases and dispositions for specified periods during the election cycle.

Audit Scope

The auditor examined selected contributions made to the campaign, and certain expenditures made during the following reporting periods:

- Seed Money (11/05/2008 through 4/21/2010)
- 11 Day Pre-Primary (4/22/2010 through 5/25/2010)
- 42 Day Post-Primary (5/26/2010 through 7/13/2010)
- 42 Day Pre-General (7/14/2010 through 9/14/2010)
- 11 Day Pre-General (9/15/2010 through 10/19/2010)
- 42 Day Post-General (10/21/2010 through 12/7/2010)

The transactions examined were recorded in the campaign's accounting and banking records. The audit's purpose was to determine if the identified contributions and expenditures (1) were properly approved by the candidate or his authorized representative; (2) were adequately documented as evidenced by original vendor invoices and cancelled checks or other acceptable third party disbursement documentation; (3) were properly reported to the Commission; and (4) complied in all material respects with the requirements of the Maine Clean Election Act and the Commission's rules.

Audit Findings and Recommendations

Finding No. 1 – Incomplete mileage reimbursement documentation

Commission rules permit candidates to reimburse themselves for vehicle travel costs incurred during the course of their campaigns. The reimbursement rate is \$.44 per mile, and reimbursement claims must be supported by a mileage log that records the number of miles traveled, the origin and destination of the travel, and which states the campaign purpose of the travel.

The Thibodeau Campaign reported a travel reimbursement on December 6, 2010 of \$593.47 to Sen. Thibodeau. Mileage logs provided by the candidate did not indicate origin and destination of travel or any description of purpose for the reimbursed travel. Accordingly, the auditor could not determine the reasonableness of the mileage claims reimbursed by the campaign.

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

FAX: (207) 287-6775

Standard – Commission Rules, Chapter Three, Section 7(1) (C) state that “A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement (emphasis added). A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate.”

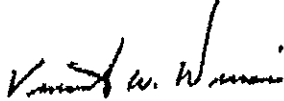
Recommendations - the Commission staff recommends that the Commission:

- find that Michael Thibodeau violated Chapter 3, Section 7(1)(C) by not keeping complete records of vehicle travel that stated the origination, destination, and purpose of campaign travel that was reimbursed with MCBA funds; and
- assess a penalty of \$100 for the violation under 21-A M.R.S.A. § 1127(1);

Candidate's Comments on the Finding and Recommendation contained in the Report

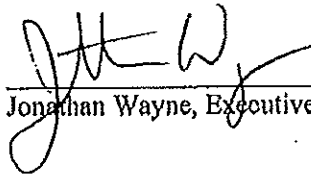
Senator Thibodeau remitted \$100 to the Commission in payment of the recommended penalty. The Senator had no other comments on the report.

Respectfully submitted,



Vincent W. Dinan, Auditor

Approved:



Jonathan Wayne, Executive Director